

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 941

Introduced by Assembly Member Rendon

February 22, 2013

An act to amend Sections 12463, 12464, 53890, and 53895 of, to add Article 6 (commencing with Section 12486) to Chapter 5 of Part 2 of Division 3 of Title 2 of, and to repeal Sections 53895.5 and 53895.7 of, the Government Code, relating to state and local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, Rendon. Controller: reports.

(1) Existing law requires the Controller to annually compile and publish reports of the financial transactions of each county, city, and school district within the state, together with other matters he or she deems of public interest.

This bill would change the definition of a special district subject to the reporting requirements of the Controller to include a public entity, agency, or board provided for by a joint powers agreement that is separate from the parties to the agreement and is responsible for the administration of the agreement.

(2) Existing law provides that if the county, city, or district reports are not made in a specified manner, or there is reason to believe that the report is false, the Controller is required to appoint a qualified accountant to make an investigation and to obtain the information required for the annual report of financial transactions. Existing law provides that if a similar investigation is made of any county, city, or district for 2 successive years, then a copy of the results of those investigations shall be transmitted to the grand jury of the county

investigated or in which the local agency investigated is situated. Existing law requires any costs incurred by the Controller in carrying out those audits to be paid by the local agency.

This bill would also authorize the Controller to perform an audit or investigation of any county, city, or special district, if the Controller has made findings, supported by documentation, that the local agency is not complying with the financial requirements in state law, state grant agreements, local charters, or local ordinances and require the Controller to prepare a report of the results of the audit or investigation and to file a copy with the local legislative body, as specified. This bill would require that if the results of those audits determine that the financial report filed by the local agency did not contain false, incomplete, or incorrect information, then the Controller shall waive the costs of the investigation, and would authorize the Controller to establish a payment program, as specified, to assist a local agency to pay for any costs that cannot be waived.

(3) Existing law provides that an officer of a local agency who fails or refuses to make and file his or her financial report within 20 days after receipt of a written notice of the failure from the Controller forfeits to the state a specified amount depending on the amount of total revenue of that local agency. Existing law raises these amounts in the case of a community redevelopment agency and a joint powers agency that issues conduit revenue bonds in the 2nd and 3rd consecutive year.

This bill would raise the forfeiture amounts for all local agencies, as specified. The bill would double these fines if the agency fails to submit the report to the Controller for 2 consecutive years, and would triple the fines if the agency fails to submit the report to the Controller for 3 consecutive years. This bill would remove other specified provisions that provide penalties for an agency that fails to submit a report.

This bill would also make technical, nonsubstantive changes and remove references to redevelopment agencies.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12463 of the Government Code is
- 2 amended to read:
- 3 12463. (a) The Controller shall compile and publish reports
- 4 of the financial transactions of each county, city, and special

1 district, respectively, within this state, together with any other
2 matter he or she deems of public interest. The reports shall include
3 the appropriations limits and the total annual appropriations subject
4 to limitation of the counties, cities, and special districts. The reports
5 to the Controller shall be made in the time, form, and manner
6 prescribed by the Controller.

7 (b) Effective January 1, 2005, the Controller shall compile and
8 publish reports of the financial transactions of each county, city,
9 and special district pursuant to subdivision (a) on or before August
10 1, September 1, and October 1 respectively, of each year following
11 the end of the annual reporting period. The Controller shall make
12 data collected pursuant to this subdivision available upon request
13 to the Legislature and its agents, on or before April 1 of each year.

14 (c) The Controller shall annually publish, on the Internet Web
15 site of the Controller, reports of the financial transactions of each
16 school district within this state, together with any other matter he
17 or she deems of public interest. The reports shall include the
18 appropriations limit and the total annual appropriations subject to
19 limitation of the school district. The reports to the Controller shall
20 be made in the time, form, and manner prescribed by the Controller.

21 (d) As used in this section, the following terms have the
22 following meanings:

23 (1) "School district" means a school district as defined in Section
24 80 of the Education Code.

25 (2) "Special district" means any of the following:

26 (A) A special district as defined in Section 95 of the Revenue
27 and Taxation Code.

28 (B) A public entity, agency, commission, or board provided for
29 by a joint powers agreement pursuant to Chapter 5 (commencing
30 with Section 6500) of Division 7 of Title 1 that is separate from
31 the parties to the agreement and is responsible for the
32 administration of the agreement.

33 (C) A nonprofit corporation that is any of the following:

34 (i) Was formed in accordance with the provisions of a joint
35 powers agreement to carry out functions specified in the agreement.

36 (ii) Issued bonds, the interest on which is exempt from federal
37 income taxes, for the purpose of purchasing land as a site for, or
38 purchasing or constructing, a building, stadium, or other facility,
39 that is subject to a lease or agreement with a local public entity.

40 (iii) Is wholly owned by a public agency.

1 SEC. 2. Section 12464 of the Government Code is amended
2 to read:

3 12464. (a) If the county, city, or special district reports are not
4 made in the time, form, and manner required or there is reason to
5 believe that a report is false, incomplete, or incorrect, the Controller
6 shall appoint a qualified accountant to make an investigation and
7 to obtain the information required. The accountant appointed shall
8 report to the Controller the results of investigation, and a copy
9 shall be filed with the legislative body of the county, city, or special
10 district, the accounts of which were investigated. If a similar
11 investigation has to be made of the accounts of any county, city,
12 or special district, for two successive years, a certified copy of the
13 results of the investigation last made shall be transmitted to the
14 grand jury of the county that was investigated or in which the city
15 or special district investigated is situated, or, if the district is
16 situated in more than one county, in the county in which any
17 portion of the special district is situated.

18 (b) (1) If the Controller has made findings pursuant to
19 subdivision (c) that a county, city, or special district is not
20 complying with the financial requirements in state law, state grant
21 agreements, local charters, or local ordinances, he or she may audit
22 or investigate the issue if he or she determines that sufficient funds
23 exist within his or her budget to conduct the audit or investigation.

24 (2) The Controller shall prepare a report of the results of the
25 audit or investigation that shall include detailed documentation of
26 the material basis for the findings included in the audit or
27 investigation. A copy of the report shall be filed with the legislative
28 body of the city, county, or special district subject to the audit or
29 investigation. A finding of illegal acts or fraud shall be
30 communicated to the appropriate authorities, including the county
31 grand jury.

32 (c) (1) Prior to an audit or investigation being conducted
33 pursuant to subdivision (b), the Controller, after consultation with
34 the local agency, shall make written findings that explain the legal
35 and factual basis supporting the decision to conduct the audit or
36 investigation and the Controller shall give the local agency a
37 reasonable opportunity to respond to these findings.

38 (2) (A) In cases in which the Controller seeks to audit or
39 investigate compliance with the financial requirements in local
40 charters or local ordinances, the Controller shall first share with

1 the local agency documentation of evidence relied upon in
 2 determining the need for the audit or investigation and provide the
 3 local agency the opportunity to conduct its own audit or
 4 investigation of the matter in a reasonable period of time. If the
 5 local agency elects to conduct an audit or investigation, the local
 6 agency shall provide the results to the Controller promptly upon
 7 completion. If the Controller subsequently proceeds with his or
 8 her own audit or investigation, he or she shall make specific written
 9 findings concerning the evidence relied upon in determining the
 10 need for the audit or investigation and confirming that each issue
 11 to be audited or investigated has not been or is not likely to be
 12 addressed by local means, which may include, but are not limited
 13 to, a grand jury or district attorney.

14 (B) The Controller shall not audit or investigate compliance
 15 with the financial requirements in local charters or local ordinances
 16 if the matter involves a pending policy or administrative decision,
 17 such as adoption of a budget, negotiations of labor or other
 18 contracts, or a pending decision on an unpaid claim. The Controller
 19 shall not audit or investigate the matter until a final decision has
 20 been adopted by the local agency.

21 (C) The Controller shall not audit or investigate compliance with
 22 the financial requirements of local charters or local ordinances if
 23 the matter is the subject of actual or completed litigation.

24 (3) For purposes of this subdivision, documentation means a
 25 writing, photograph, photostat, email or facsimile transmission,
 26 or any other means of recording upon a tangible thing in any form
 27 of communication or representation, including letters, words,
 28 pictures, sounds, or symbols, or combinations thereof, or a record
 29 thereby created, regardless of the manner in which the record has
 30 been stored.

31 (4) The Controller shall not initiate or conduct an audit or
 32 investigation pursuant to subdivision (b) or (c) of a local agency
 33 that falls within the date the local agency has initiated the neutral
 34 evaluation process, pursuant to Article 5 (commencing with Section
 35 53760) of Chapter 4 of Part 1 of ~~Title 2~~, *Division 2 of Title 5*, and
 36 the date that process has been completed.

37 (d) (1) Any costs incurred by the Controller pursuant to
 38 subdivision (a), including contracts with, or employment of,
 39 certified public accountants or public accountants, in compiling a
 40 financial report pursuant to Section 12463 shall be borne by the

1 county, city, or special district, and shall be a charge against any
2 unencumbered funds of the county, city, or special district. Any
3 forfeiture imposed by Section 53895 may be offset up to the total
4 costs incurred by the Controller. Any remaining balance shall be
5 forfeited in accordance with Sections 53895 and 53895.5. Any
6 costs incurred by the Controller in excess of the forfeiture imposed
7 shall be a charge against any unencumbered funds of the county,
8 city, or special district.

9 (2) If an investigation conducted pursuant to subdivision (a)
10 determines that the financial report filed by the county, city, or
11 special district did not contain materially false, incomplete, or
12 incorrect information, the Controller shall waive the costs of the
13 investigation. The Controller may establish a payment program,
14 with interest, for up to five years to assist a local agency to pay
15 for the costs that cannot be waived.

16 SEC. 3. Article 6 (commencing with Section 12486) is added
17 to Chapter 5 of Part 2 of Division 3 of Title 2 of the Government
18 Code, to read:

19
20 Article 6. Voluntary Local Agency Financial Review
21

22 12486. (a) At the written request of the governing body, chief
23 administrative officer, or chief executive of a local agency, the
24 Controller may convene a local agency financial review committee
25 to provide assistance to the local agency in reviewing and assessing
26 its financial condition and related internal controls to avert or
27 manage a serious financial problem.

28 (b) The request shall include a description of the factors that
29 warrant the need for review and assessment.

30 (c) The local agency shall reimburse the Controller for any costs
31 incurred by the Controller in conducting a review pursuant to this
32 section. The Controller may establish a payment program for up
33 to five years, with interest.

34 (d) A local agency financial review committee shall be chaired
35 by the Controller and both state and local government
36 representatives selected by the Controller. The Controller shall
37 allow at least two local government representatives to serve on the
38 committee, selected as follows:

39 (1) If the local agency is a city, representatives selected by the
40 League of California Cities.

1 (2) If the local agency is a county, representatives selected by
2 the California State Association of Counties.

3 (3) If the local agency is a special district, representatives
4 selected by the California Special Districts Association.

5 (e) The Controller shall use the services of a consultant that has
6 extensive financial management and accounting experience with
7 local agencies in the state to assist the local agency financial review
8 committee in evaluating and assisting the local agency.

9 (f) In consultation with the local agency requesting assistance,
10 the local agency financial review committee shall provide a written
11 report to the local agency, which may include its recommendations
12 and an assessment of the local agency's financial practices and
13 conditions and internal controls related to its financial condition.

14 (g) Assistance provided pursuant to this section shall not include
15 direct financial payments or loans to local agencies that are not
16 otherwise authorized by statute.

17 (h) If the local agency notifies the Controller that it has initiated
18 the neutral evaluation process pursuant to Article 5 (commencing
19 with ~~Section 53780~~ 53760) of Chapter 4 of Part 1 of ~~Title 2,~~
20 *Division 2 of Title 5*, the Controller shall suspend all activities
21 under this section, unless the local agency requests that the
22 activities be continued. The local agency shall be liable for costs
23 under subdivision (c).

24 12487. For purposes of this article, "local agency" means a
25 city, county, city and county, or special district.

26 SEC. 4. Section 53890 of the Government Code is amended
27 to read:

28 53890. As used in this article, "local agency" means any city,
29 county, and special district required to furnish financial reports
30 pursuant to Section 12463.

31 SEC. 5. Section 53895 of the Government Code is amended
32 to read:

33 53895. (a) An officer of a local agency who fails or refuses to
34 make and file his or her report within 20 days after receipt of a
35 written notice of the failure from the Controller shall forfeit to the
36 state:

37 (1) Two thousand five hundred dollars (\$2,500), in the case of
38 a local agency with total revenue, in the prior year, of less than
39 one hundred thousand dollars (\$100,000), as reported in the
40 Controller's annual financial reports.

(2) Five thousand five hundred dollars (\$5,500) in the case of a local agency with total revenue, in the prior year, of at least one hundred thousand dollars (\$100,000) but less than two hundred fifty thousand dollars (\$250,000), as reported in the Controller's annual financial reports.

(3) Ten thousand dollars (\$10,000) in the case of a local agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars (\$250,000), as reported in the Controller's annual financial reports.

(b) (1) Upon the request of the Controller, the Attorney General shall prosecute an action for the forfeiture in the name of the people of the State of California.

(2) Upon a satisfactory showing of good cause, the Controller may waive the penalties for late filing provided in this section.

(c) If an officer of a local agency fails or refuses to make and file his or her report within 20 days after receipt of a written notice pursuant to subdivision (a) for two consecutive years, the forfeiture assessed pursuant to paragraphs (1), (2), and (3) of subdivision (a) in the second year shall be doubled.

(d) If an officer of a local agency fails or refuses to make and file his or her report within 20 days after receipt of a written notice pursuant to subdivision (a) for three consecutive years, the forfeiture or fine assessed pursuant to paragraphs (1), (2), and (3) of subdivision (a) in the third year shall be tripled.

(e) An agency that is assessed a forfeiture pursuant to this section shall still be required to file the report pursuant to Section 53891.

SEC. 6. Section 53895.5 of the Government Code is repealed.

SEC. 7. Section 53895.7 of the Government Code is repealed.